

In response, the contention is respectfully traversed. It is also respectfully submitted that the rejection is frivolous and there should have been no need for filing this response. The cited art is directed to the wrong financial product and elaborately and explicitly states that the subject matter of the present invention was not known or imagined. Applicant attempted to point this out to the Examiner during an interview with the Examiner and inventor Wayne Perg. However, the Examiner stated that he was unable to find the file, and that the call should be resumed. After repeated attempts to resume the interview, now into the extension period in reliance upon the Examiner's statements, it has become clear that the only way to proceed without further cost is to make this filing. This is a particularly disappointing turn of events in view of another appeal, in which the PTO backed down from pursuing the prior frivolous position. Enough is enough.

Applicant's claims require an investment fund. The cited art, as stated in its apt title, is directed to a "portfolio." A portfolio is not an investment fund because anyone who owns 2 shares of stock is not required to register with the SEC as an investment fund. For a general understanding of the differences between an investment fund and a portfolio, consider the enclosed Rulemaking Request filed with the SEC which mentions a Wallman (Folio Fn) portfolio.

More so, Wallman elaborately contrasts his invention with an investment fund at Col. 1, lines 49-50, and particularly from Col. 1, line 60-Col. 5, line 14, therein detailing 8 numbered disadvantages of funds. A portfolio is not a fund according to the very teaching relied upon by the Examiner in withholding the patent.

More so, Wallman teaches at Col. 2, lines 19-21, that "it is also not possible for the investor to control what specific securities a fund will hold in its portfolio, or with what weighing or amounts..." This is the substance of Applicant's claimed invention! Applicant claims a customizable investment fund...

So, not only is the art cited by the Examiner directed to the wrong financial product, it is also evidence that the claimed invention is not obvious. If this is not apparent on its face, it should have been apparent in an interview such that the filing of this Response should not have been necessary.

The PTO has cited no reason to withhold a patent, and hopefully the PTO can relocate the file. Issuance should follow receipt of this filing.

III. CONCLUSION

The application, as amended, is believed to be in condition for allowance, and favorable action is requested. If any extension of time for responding is required, it is requested that this be deemed a petition therefore, and the Commissioner is authorized to charge any required fee, or credit any overcharge to, PTO Account 50-0235.

Date: March 2, 2004

Respectfully submitted,



Peter K. Trzyzna
(Reg. No. 32,601)

P.O. Box 7131
Chicago, IL 60680-7131
(312) 240-0824